IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Bail Appl..No. 3507 of 2007()

CP.21/2006 of J.M.F.C.-II, ALUVA
CRIME NO.471/02 OF ANGAMALY POLICE STATION

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PETITIONER/1ST ACCUSED.

KANNAN @ KIRAN @ DONA KRISHNAN,
AGED 35 YEARS, MUDAKKAL VEEDU, MAROTTICHUVADU
BAGOM, THRIKKAKARA VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 3507 OF 2007

Dated this the 19th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused in a prosecution for offences punishable, inter alia, under Sec.302 read with Sec.149 of the IPC. Altogether, there are six accused persons. The crux of the prosecution case is that on account of prior animosity, accused 1 and 2 wanted to do away with one Shaji. They allegedly entered into a conspiracy to liquidate the said Shaji. Accused 2 to 6 were the co-conspirators. They are allegedly professional criminals whose services were secured by accused 1 and 2. On 29/6/02 at about 11 p.m. the accused persons, the conspirators and members of the unlawful assembly, allegedly waited for the said Shaji to come to the scene of the occurrence. Unfortunately, for the deceased in this case, who is the brother of the said Shaji, reached the scene of the crime and

he was wrongly understood to be the target Shaji. The accused persons allegedly unleashed an attack on him after dragging him to the precise spot of occurrence and inflicted injuries with dangerous weapons. No accused person is named in the F.I.R. In the course of investigation, the complicity of accused 1 and 2 was identified. Subsequent interrogation and investigation revealed to the police the contumacious involvement of the petitioner herein. The petitioner herein was allegedly present at the scene of the crime. He had allegedly stopped another person wrongly assuming him to be Shaji. Such person who is cited as witness was allegedly detained by the petitioner at the scene of the crime. It is thereafter that Shoji – the deceased, came to the scene of the crime and the accused persons allegedly indulged in the specific culpable overt acts. The petitioner was brought on the array of accused in the year 2002 itself. He was not available for arrest. Long later, the final report/charge sheet was filed on 30/5/05 showing the petitioner herein as an absconding accused. Later, the petitioner was arrested in some other crime on 23/11/06. His arrest was recorded in this crime on 29/11/06. The petitioner thus

continues in custody in this crime from 29/11/06.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The contention that he is a professional criminal is not supported by any tangible material. That the petitioner was absconding is also not a circumstance which can be reckoned as a formidable one against the petitioner. The petitioner was not shown as an accused in the F.I.R. The petitioner had no reason to assume that he is wanted in this case. The learned counsel for the petitioner further submits that there is no specific overt criminal act alleged against the petitioner by the prosecution in the crime proper. There is no prospect of the trial commencing immediately. In these circumstances, the learned counsel for the petitioner prays that the petitioner may now be directed to be enlarged on bail subject to appropriate conditions.

3. Notice was given. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that there are clinching indications to show that the petitioner was a conspirator as also a member of the unlawful assembly which actually implemented the purpose of

the conspirators. It is incorrect to say that there was no specific overt act alleged against the petitioner. He allegedly was in possession of a dangerous weapon – sword. The 1st accused had allegedly taken the sword from the petitioner and inflicted the injury. The antecedent, attendant and subsequent conduct of the petitioner unmistakably reveals his involvement in the crime. The petitioner has been absconding for a long period of time. He is a close associate of the principal accused i.e., A1 and A2 in the crime. The incident had taken place as early as in 2002 and the matter is ripe and ready for trial. The petitioner has successfully avoided the long arms of law for a long period of time. In these circumstances, release of the petitioner on bail is opposed. There may be a direction for expeditious disposal of the case. The petitioner may not be enlarged on bail, submits the learned Public Prosecutor.

4. In the nature of the facts and circumstances of this case, a report of the learned Sessions Judge was called for. The learned Sessions Judge submits that the matter is now ripe

to be taken up for trial. It stood posted to 7/7/07 for framing charges. Some of the accused were not available and the case had therefore to be posted to 27/7/07. The learned Sessions Judge submits that if the charges can be framed on that day, the matter can straightaway be posted for trial and the case can be disposed of within a period of two months.

5. I have considered all the relevant circumstances. Though there is nothing to show that the petitioner is involved in any previous offences under Sec.302 of the IPC, there are admittedly indications to suggest that the petitioner is involved in three crimes – two of them under Sec.379 read with Sec.411 of the IPC and the third relating to intimidation of a witness in a murder case. The allegations raised in this crime are grave and serious. In association with the principal accused, he had allegedly entered into the conspiracy to perform violence on an individual against him he had no personal animosity. The antecedents of the petitioner, the long period of absconding by the petitioner, the nature and gravity of the allegations, the stage of the proceedings do all cumulatively persuade me to hold that this is not a fit case where the petitioner can or ought

to be enlarged on bail at this stage. Subject to appropriate directions regarding expeditious completion of the trial, the application for bail filed by the petitioner can be dismissed.

6. In the result, this petition is dismissed. The learned Sessions Judge is directed to ensure that the trial commences as expeditiously as possible – at any rate, within a period of three months from this date. If trial (I mean examination of witnesses) does not commence within such period, the petitioner shall be at liberty to approach this Court for bail again.

7. Communicate this order to the learned Sessions Judge forthwith who shall comply with the same and report compliance.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge